



**9110-04-P**

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**Docket No. USCG 2020-0027**

**RIN 1625-AA09**

Drawbridge Operation Regulation; Trent River, New Bern, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is altering the operating schedule that governs the US 70 (Alfred C. Cunningham) Bridge across the Trent River, mile 0.0, in New Bern, North Carolina. This modification will allow the drawbridge to be maintained in the closed position during peak traffic hours and provide daily scheduled openings to meet the reasonable needs of navigation.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2020-0027 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Martin A. Bridges, Fifth Coast Guard District (dpb), at (757) 398-6422, e-mail [Martin.A.Bridges@uscg.mil](mailto:Martin.A.Bridges@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

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### **I. Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Proposed Management and Budget
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Basis and Purpose, and Regulatory History**

The purpose of this rule is to alter the operating schedule that governs the US 70 (Alfred C. Cunningham) Bridge across the Trent River, mile 0.0, in New Bern, North Carolina. This modification will allow the drawbridge to be maintained in the closed position during peak traffic hours and provide daily scheduled openings to meet the reasonable needs of navigation. On May 13, 2020, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled “Drawbridge Operation Regulation; Trent River, New Bern, NC” in the Federal Register (85 FR 28546). There we stated why we issued the NPRM, and invited comments on

our proposed regulatory action. During the comment period that ended June 12, 2020, we received one comment and that comment is addressed in Section IV of this Final Rule.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The US 70 (Alfred C. Cunningham) Bridge across the Trent River, mile 0.0, in New Bern, North Carolina, has a vertical clearance of 14 feet above mean high water in the closed position and unlimited vertical clearance above mean high water in the open position. The current operation schedule for the drawbridge is published in 33 CFR § 117.843(a)

Trent River is used predominately by recreational vessels, sailing vessels, and pleasure craft. The 16-month average of bridge openings, average number of vessels, and maximum number of bridge openings by month, as drawn from the data contained in the bridge tender logs provided by the North Carolina Department of Transportation, is presented below.

<b>Month</b>	<b>Average Openings</b>	<b>Average Vessels</b>	<b>Maximum Openings</b>
January	28	24	28
February	36	28	36
March	67	56	67
April	204	212	271
May	236	265	302
June	245	251	306
July	199	185	242
August	261	260	261
September	161	163	161
October	119	106	119
November	122	85	122
December	65	39	65
Monthly	145	139	165
Daily	56	54	63

#### **IV. Discussion of Comments, Changes and Final Rule**

The Coast Guard provided a comment period of 30 days and received one comment. The commenter is in favor of removing the Sunday afternoon opening restrictions from May 24 through September 8, but deems the hour and the half hour opening schedule from 6 a.m. to 10 p.m. as unnecessary, and would like to see the on-demand practice for bridge openings continued. The Coast Guard considered the comment in relation to current and prospective navigation safety and mobility objectives, as well as the purpose of the proposed regulation, and found no basis upon which to amend the proposed regulatory language within the final rule.

#### **V. Regulatory Analyses**

The Coast Guard has developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and

Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that vessels can still transit the bridge on signal from 10 p.m. to 6 a.m., and on the hour and the half hour from 6 a.m. to 10 p.m., except from 7:30 a.m. to 8:30 a.m., and from 4:30 p.m. to 6 p.m., Monday through Friday, except holidays, when the draw shall remain closed. The draw shall open upon request at all times for vessels as defined in 33 CFR 117.31.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

*C. Assistance for Small Entities*

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its

provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this rule of any policy or action of the Coast Guard.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

*D. Collection of Information*

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

*E. Federalism and Indian Tribal Government*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in

Executive Order 13132.

*F. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. The Coast Guard received zero comments about money expenditures from any State, local, or tribal government.

*G. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

#### *H. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters.

Protesters are asked to contact the person listed in the “FOR FURTHER INFORMATION CONTACT” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### **PART 117—DRAWBRIDGE OPERATION REGULATIONS**

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.843(a) to read as follows:

#### **§ 117.843 Trent River**

(a) The draw of the U.S. 70 Bridge, mile 0.0, at New Bern:

(1) Shall open on the hour and the half hour from 6 a.m. to 10 p.m., except during the times authorized in accordance with (a) (2) of this section.

(2) Shall remain closed from 7:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday; except holidays.

(3) Shall open on signal from 10 p.m. to 6 a.m.



(4) Shall open upon request at all times for vessels as defined in  
§117.31.

\* \* \* \* \*

Dated: September 8, 2020

K. M. Smith  
Rear Admiral, U.S. Coast Guard  
Commander, Fifth Coast Guard District

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